

AMENDED IN ASSEMBLY MAY 22, 2000
AMENDED IN ASSEMBLY MAY 10, 2000
AMENDED IN ASSEMBLY APRIL 5, 2000
AMENDED IN ASSEMBLY MARCH 29, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2721

Introduced by Assembly Member Wesson
(Principal coauthor: Assembly Member Longville)
(Coauthor: Assembly Member Havice)
(Coauthor: Senator Murray)

February 25, 2000

An act to amend Section 1770 of the Civil Code, and to amend Sections 2872 and 2874 of, and to add Section 2875.5 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2721, as amended, Wesson. Automatic dialing-announcing devices.

(1) Existing law authorizes the Public Utilities Commission to control and regulate the use of automatic dialing-announcing devices and specifies the hours during which the devices may not be operated. Existing law also provides for exemptions from regulation and time-of-use limitations in various situations, including the contacting of an established business associate, customer or other person

having an established relationship with the person using the automatic dialing-announcement device.

This bill would expand the exemptions, as prescribed. The bill would also state that the requirement that an automatic dialing announcement message be preceded by an unrecorded natural voice message does not apply to specified situations.

The bill would prohibit a prerecorded message from being left on an answering machine, voicemail, or other message recording device. The bill would prohibit, on and after July 1, 2001, any person operating specified automatic calling equipment from making a telephone connection for which no person, acting as an agent or telemarketer, or prerecorded message, is available for the person called.

(2) The Consumers Legal Remedies Act prohibits any person in a transaction intended to result, or which results, in the sale or lease of goods or services to disseminate an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message. The act exempts from that prohibition a message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making the call.

This bill would restate that exemption, limit an established relationship, as prescribed, and add an exemption for a call for the purpose of fraud prevention.

(3) The bill would make related legislative findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of
2 the following:



1 (a) The use of the telephone to market goods and
2 services to the home and other businesses is now
3 pervasive due to the increased use of cost-effective
4 telemarketing techniques.

5 (b) Unrestricted telemarketing, however, can be an
6 intrusive invasion of privacy, and, when an emergency or
7 medical assistance telephone line is seized, a risk to public
8 safety.

9 (c) Many consumers are outraged over the
10 proliferation of intrusive nuisance calls to their homes
11 from telemarketers, including, but not limited to,
12 prerecorded messages and abandoned calls.

13 (d) It is the intent of the Legislature in enacting this
14 act to balance individual privacy rights and public safety
15 concerns with commercial free speech rights.

16 SEC. 2. Section 1770 of the Civil Code is amended to
17 read:

18 1770. (a) The following unfair methods of
19 competition and unfair or deceptive acts or practices
20 undertaken by any person in a transaction intended to
21 result or which results in the sale or lease of goods or
22 services to any consumer are unlawful:

23 (1) Passing off goods or services as those of another.

24 (2) Misrepresenting the source, sponsorship, approval,
25 or certification of goods or services.

26 (3) Misrepresenting the affiliation, connection, or
27 association with, or certification by, another.

28 (4) Using deceptive representations or designations of
29 geographic origin in connection with goods or services.

30 (5) Representing that goods or services have
31 sponsorship, approval, characteristics, ingredients, uses,
32 benefits, or quantities which they do not have or that a
33 person has a sponsorship, approval, status, affiliation, or
34 connection which he or she does not have.

35 (6) Representing that goods are original or new if they
36 have deteriorated unreasonably or are altered,
37 reconditioned, reclaimed, used, or secondhand.

38 (7) Representing that goods or services are of a
39 particular standard, quality, or grade, or that goods are of
40 a particular style or model, if they are of another.

- 1 (8) Disparaging the goods, services, or business of
2 another by false or misleading representation of fact.
- 3 (9) Advertising goods or services with intent not to sell
4 them as advertised.
- 5 (10) Advertising goods or services with intent not to
6 supply reasonably expectable demand, unless the
7 advertisement discloses a limitation of quantity.
- 8 (11) Advertising furniture without clearly indicating
9 that it is unassembled if that is the case.
- 10 (12) Advertising the price of unassembled furniture
11 without clearly indicating the assembled price of that
12 furniture if the same furniture is available assembled
13 from the seller.
- 14 (13) Making false or misleading statements of fact
15 concerning reasons for, existence of, or amounts of price
16 reductions.
- 17 (14) Representing that a transaction confers or
18 involves rights, remedies, or obligations which it does not
19 have or involve, or which are prohibited by law.
- 20 (15) Representing that a part, replacement, or repair
21 service is needed when it is not.
- 22 (16) Representing that the subject of a transaction has
23 been supplied in accordance with a previous
24 representation when it has not.
- 25 (17) Representing that the consumer will receive a
26 rebate, discount, or other economic benefit, if the earning
27 of the benefit is contingent on an event to occur
28 subsequent to the consummation of the transaction.
- 29 (18) Misrepresenting the authority of a salesperson,
30 representative, or agent to negotiate the final terms of a
31 transaction with a consumer.
- 32 (19) Inserting an unconscionable provision in the
33 contract.
- 34 (20) Advertising that a product is being offered at a
35 specific price plus a specific percentage of that price
36 unless (1) the total price is set forth in the advertisement,
37 which may include, but is not limited to, shelf tags,
38 displays, and media advertising, in a size larger than any
39 other price in that advertisement, and (2) the specific
40 price plus a specific percentage of that price represents



1 a markup from the seller's costs or from the wholesale
2 price of the product. This subdivision shall not apply to
3 in-store advertising by businesses which are open only to
4 members or cooperative organizations organized
5 pursuant to Division 3 (commencing with Section 12000)
6 of Title 1 of the Corporations Code where more than 50
7 percent of purchases are made at the specific price set
8 forth in the advertisement.

9 (21) Selling or leasing goods in violation of Chapter 4
10 (commencing with Section 1797.8) of Title 1.7.

11 (22) (A) Disseminating an unsolicited prerecorded
12 message by telephone without an unrecorded, natural
13 voice first informing the person answering the telephone
14 of the name of the caller or the organization being
15 represented, and either the address or the telephone
16 number of the caller, and without obtaining the consent
17 of that person to listen to the prerecorded message.

18 (B) This subdivision does not apply to any of the
19 following:

20 (i) A call for the purpose of collecting an existing
21 obligation.

22 (ii) A call for the purpose of fraud prevention.

23 (iii) Any call generated at the request of the recipient.

24 (iv) Any call generated by an automatic
25 dialing-announcing device that is not used to randomly or
26 sequentially dial telephone numbers, but that is used to
27 transmit a message in furtherance of an established
28 relationship to a business associate, customer, or other
29 person having a direct, established relationship with the
30 person using the automatic dialing-announcing device to
31 transmit the message. A message in furtherance of an
32 established relationship does not include a message
33 pertaining to a new commercial transaction that is
34 unrelated to any product or service currently within the
35 scope of the established relationship.

36 (23) The home solicitation, as defined in subdivision
37 (h) of Section 1761, of a consumer who is a senior citizen
38 where a loan is made encumbering the primary residence
39 of that consumer for the purposes of paying for home
40 improvements and where the transaction is part of a

1 pattern or practice in violation of either subsection (h) or
2 (i) of Section 1639 of Title 15 of the United States Code
3 or subsection (e) of Section 226.32 of Title 12 of the Code
4 of Federal Regulations.

5 A third party shall not be liable under this subdivision
6 unless (1) there was an agency relationship between the
7 party who engaged in home solicitation and the third
8 party or (2) the third party had actual knowledge of, or
9 participated in, the unfair or deceptive transaction. A
10 third party who is a holder in due course under a home
11 solicitation transaction shall not be liable under this
12 subdivision.

13 (b) (1) It is an unfair or deceptive act or practice for
14 a mortgage broker or lender, directly or indirectly, to use
15 a home improvement contractor to negotiate the terms
16 of any loan that is secured, whether in whole or in part,
17 by the residence of the borrower and which is used to
18 finance a home improvement contract or any portion
19 thereof. For purposes of this subdivision, “mortgage
20 broker or lender” includes a finance lender licensed
21 pursuant to the California Finance Lenders Law
22 (Division 9 (commencing with Section 22000) of the
23 Financial Code), a residential mortgage lender licensed
24 pursuant to the California Residential Mortgage Lending
25 Act (Division 20 (commencing with Section 50000) of the
26 Financial Code), or a real estate broker licensed under
27 the Real Estate Law (Division 4 (commencing with
28 Section 10000) of the Business and Professions Code).

29 (2) This section shall not be construed to either
30 authorize or prohibit a home improvement contractor
31 from referring a consumer to a mortgage broker or
32 lender by this subdivision. However, a home
33 improvement contractor may refer a consumer to a
34 mortgage lender or broker if that referral does not violate
35 Section 7157 of the Business and Professions Code or any
36 other provision of law. A mortgage lender or broker may
37 purchase an executed home improvement contract if
38 that purchase does not violate Section 7157 of the Business
39 and Professions Code or any other provision of law.
40 Nothing in this paragraph shall have any effect on the

1 application of Chapter 1 (commencing with Section
2 1801) of Title 2 to a home improvement transaction or the
3 financing thereof.

4 SEC. 3. Section 2872 of the Public Utilities Code is
5 amended to read:

6 2872. (a) The connection of automatic
7 dialing-announcing devices to a telephone line is subject
8 to this article and to the jurisdiction, control, and
9 regulation of the commission.

10 (b) No person shall operate an automatic
11 dialing-announcing device except in accordance with this
12 article. The use of such a device by any person, either
13 individually or acting as an officer, agent, or employee of
14 a person or corporation operating automatic
15 dialing-announcing devices, is subject to this article.

16 (c) No person shall operate an automatic
17 dialing-announcing device in this state to place a call that
18 is received by a telephone in this state during the hours
19 between 9 p.m. and 9 a.m. California time.

20 (d) This article does not prohibit the use of an
21 automatic dialing-announcing device for any of the
22 following purposes:

23 (1) A school for purposes of contacting parents or
24 guardians of pupils regarding attendance.

25 (2) An exempt organization under the Bank and
26 Corporation Tax Law (Part 11 (commencing with
27 Section 23001) of Division 2 of the Revenue and Taxation
28 Code) for purposes of contacting its members.

29 (3) A privately owned or publicly owned cable
30 television system for purposes of contacting customers or
31 subscribers regarding the previously arranged
32 installation of facilities on the premises of the customer or
33 subscriber.

34 (4) A privately owned or publicly owned public utility
35 or its affiliate for purposes of contacting customers or
36 subscribers regarding the previously arranged
37 installation or ongoing operation of facilities or services
38 on the premises of the customer or subscriber or for
39 purposes of contacting employees for emergency actions
40 or repairs required for public safety or to restore services.

(5) A petroleum refinery, chemical processing plant, or nuclear powerplant for purposes of advising residents, public service agencies, and the news media in its vicinity of an actual or potential life-threatening emergency.

(6) A law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or any private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, placing calls through automatic dialing-announcing devices, if those devices are used for any of the following purposes:

(A) Providing public service information relating to public safety.

(B) Providing information concerning police or fire emergencies.

(C) Providing warnings of impending or threatened emergencies.

(7) A call generated at the request of the recipient.

(8) A call for the purpose of collecting an existing obligation.

(9) A call for the purpose of fraud prevention.

(10) A call that is not made for a commercial purpose.

~~(11) Any~~

(e) This article does not apply to any automatic dialing-announcing device that is not used to randomly or sequentially dial telephone numbers, but that is used to transmit a message in furtherance of an established relationship to a business associate, customer, or other person having a direct, established relationship with the person using the automatic dialing-announcing device to transmit the message. A message in furtherance of an established relationship does not include a message pertaining to a new commercial transaction that is unrelated to any product or service currently within the scope of the established relationship.

~~(e)~~

(f) The commission may determine any question of fact arising under this section.

1 SEC. 4. Section 2874 of the Public Utilities Code is
2 amended to read:

3 2874. (a) Except as provided in subdivision (d) *or*
4 (e) of Section 2872, if telephone calls are placed through
5 the use of an automatic dialing-announcing device, the
6 device may be operated only after an unrecorded, natural
7 voice announcement has been made to the person called
8 by the person calling. The announcement shall do all of
9 the following:

10 (1) State the nature of the call and the name, address,
11 and telephone number of the business or organization
12 being represented, if any.

13 (2) Inquire as to whether the person called consents to
14 hear the prerecorded message of the person calling.

15 (b) The calling person described in subdivision (a)
16 shall disconnect the automatic dialing-announcing device
17 from the telephone line upon the termination of the call
18 by either the person calling or the person called.

19 (c) It does not constitute consent of the person called
20 to hear the prerecorded message of the calling person if
21 the calling person connects to an answering machine,
22 voicemail, or other message recording device, and the
23 prerecorded message may not be left on the answering
24 machine, voicemail, or other message recording device.

25 SEC. 5. Section 2875.5 is added to the Public Utilities
26 Code, to read:

27 2875.5. On and after July 1, 2001, no person operating
28 any automatic equipment that incorporates a storage
29 capability of telephone numbers to be called or a random
30 or sequential number generator capable of producing
31 numbers to be called may make a telephone connection
32 for which no person, acting as an agent or telemarketer,
33 or prerecorded message, as set forth in subdivision (d) of
34 Section 2872, is available for the person called.

